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## THE CURRENT STATE OF CONSTITUTIONAL AND LEGAL REGULATION OF INSTITUTION VETO OF PRESIDENT OF UKRAINE

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### Summary

The article deals with current state of constitutional and legal regulation of veto of President of Ukraine; we analyzed various scientific approaches defining concept of «constitutional and legal regulation of veto of President», and formulated its own definition; analyzed legal acts by which such regulation is carried out and offered their classification; identified gaps and deficiencies of current state of constitutional and legal regulation of President's veto, both from a scientific point of view, and from legal practice and ways of its improvement through changes in current legislation while using experience of foreign countries in this sphere.

**Key words:** President of Ukraine, President's veto, constitutional and legal regulation, constitutional-legal act.

### Аннотация

В статье раскрывается действующее состояние конституционно-правового регулирования вето Президента Украины; проанализированы различные научные подходы, определяющие понятие «конституционно-правовое регулирование вето Президента», а также сформулировано собственное его определение (дефиницию); проведен анализ нормативно-правовых актов и предложена их классификация, с помощью которой осуществляется такое регулирование; выявлены пробелы и недостатки современного состояния конституционно-правового регулирования вето Президента, как с научной точки зрения, так и с правоприменительной практики, определены пути его совершенствования путем внесения изменений в действующее законодательство с одновременным использованием опыта зарубежных государств в этой сфере.

**Ключевые слова:** Президент Украины, вето Президента, конституционно-правовое регулирование, конституционно-правовой акт.

**Problem formulation.** The President exercises his veto power on basis of constitutional and legal norms that reinforce content, scope veto, procedure of application and poverty. The peculiarity of constitutional and legal rules through which legal regulation of veto of President of Ukraine, is that they have higher legal force, complicated mechanism of inclusion of changes and additions. Thus, the system of constitutional and legal regulations form Constitution of Ukraine, constitutional laws and acts-interpretation and acts-implementation of relevant provisions of Constitution. Analysis of constitutional norms of legal acts in regulation of President's veto will determine current state legislation, its shortcomings and gaps in order to develop recommendations for its improvement.

**Background research** confirmed lack of scientific works devoted to current state of constitutional and legal regulation of institution's veto of President of Ukraine, combined with need of complex scientific

analysis of this question determines importance and timeliness of this article.

In domestic science constitutional law problems of legal regulation of President's veto on theoretical level, is devoted to research of such scholars as D.M. Belov, I.O. Bernazyuk, M. Bilak, Y.P. Bytyak, O.V. Boiko, I. Vedernikov, A.Z.Gheorghita, V.Holovatenko, G.I.Dutka, V.P. Ermolin, N.A. Zhuk, N. I. Zelinsky, A.V.Karlovlch, D.S. Kovryzhenko, L.M. Lehin, D.V. Mazur, G.V. Makarov, P.T. Manyuk, V.F. Pohorilko, S.G. Seragina, O.F. Skakun, S.V. Skits, T.V. Skomoroha, I.E. Slovska, V.V. Sukhonos, V.M. Shapoval, V.A. Shatilo and others. However, most scientific papers are not taken into account latest amendments made to Constitution of Ukraine as well as modern political and legal environment in which institute develops veto.

### The aims and objectives of research.

The article is to determine current state of constitutional and legal regulation of veto of President of Ukraine and ways of its improvement. To achieve this goal



it is necessary to perform following tasks: formulate concept of category of «constitutional-legal regulation of veto of President»; develop a classification of legal acts underlying regulation presidential veto; an analysis of Constitution and other constitutional regulations governing use, review and overcome presidential veto; determine current state of constitutional and legal regulation of veto of President of Ukraine and ways of its improvement.

**Statement of basic material of study.** To determine current state of constitutional and legal regulation of veto of President of Ukraine, first of all, to find out value category «constitutional and legal regulation».

Thus, according to A.Z. Gheorghita, constitutional and legal regulation – is regulatory and organizational impact on certain social relations with a view to organizing, protection and development [1, p. 13]. The scientist rendered definition which is fairly general in nature, and applicable to all forms of legal regulation. Based on this definition, you can not select features inherent in constitutional-legal regulation and norms by which it is carried out.

Authors of textbook «State law of foreign countries» B.V. Kalinowski, O.J. Lapka and others, proposed wording concept of «constitutional-legal regulation»: a system of legal norms regulating relations in process of interaction between individual, society and state associated with exercise of public authority [2, p. 14]. So, sponsored basis for constitutional and legal regulations laid specific relationships that fall under this regulation.

As for constitutional and legal regulation of President's veto, we can distinguish following characteristic features: 1) by using norms-principles, norms-safeguards and regulative norms of Constitution of Ukraine; 2) regulates specific type of constitutional-legal relations, that develop in process of legislative activity of Verkhovna Rada and President of Ukraine; 3) by using peremptory methods, ie derogation from requirements of constitutional law. This means that President of Ukraine takes his own decision to sign law or veto law, as the veto – it is his right. However, if president used his veto, its implementation should be carried out in full accordance with Constitution of Ukraine.

So we in constitutional – legal regulation presidential veto should be understood meaningful impact on legal relations in process of legislative activity during application review and to overcome veto of President of Ukraine, in order to regulate and protect the constitutional and political system, quality assurance laws and work constitutional law based on imperative methods.

Normative legal acts through which constitutional and legal regulation of veto of President of Ukraine, divided into three groups: 1) Constitution of Ukraine; 2) acts-interpretation; 3) acts-realization.

Analyze position of each of these groups acts constitutional and legal regulation.

Thus, Constitution of Ukraine – Basic Law of our country and basic legal act in system acts constitutional and legal regulation. As stated in Constitution itself (Art. 8) its norms are directly applicable [3]. This means that implementation of provisions enshrined in norms of Constitution, there is no need for their additional legal regulation. However, this does not exclude possibility of specifying laws or regulations of normative legal acts.

The provisions of Constitution of Ukraine regulating President signed a law that passed by Verkhovna Rada of Ukraine, enshrined in two articles. In particular, in ch. 2, Art. 94 of Constitution stipulates that the President of Ukraine within fifteen days after receipt of a law signs his, thus is taking for execution, and officially promulgates it or returns law with substantiated and formulated proposals to Verkhovna Rada of Ukraine for reconsideration. In n. 30, ch. 1, Art. 106 of Constitution also states that President may veto laws adopted by Verkhovna Rada of Ukraine (except for laws amending Constitution of Ukraine) with their subsequent return for repeat consideration by Verkhovna Rada of Ukraine [3]. Comparing provisions of these two articles can come to conclusion that only second one (p. 30, ch. 1, Art. 106) we are talking about veto of President. In Art. 94 legislator does not use this term, but gives President right to return law with substantiated and formulated proposals to Verkhovna Rada. In order to determine identity or difference enshrined in these articles of human President, let us analyze some decisions of Constitutional Court of Ukraine, which interpreted rules of art. 94

and p. 30, ch. 1, Art. 106 of Constitution of Ukraine.

Thus, analysis of these acts shows that provisions set out in reasoning part of Decision of Constitutional Court of Ukraine on July 7, 1998 № 11-rp / 98 [4], enter into a conflict with provisions contained in Decision of 16 April 2008 № 6-rp / 2008 [5], and partly from those identified in Decision of Constitutional Court of Ukraine of 11.03.2003 № 6-rp / 2003 [6].

Moreover, a systematic analysis of Decision of Constitutional Court of Ukraine of 11.03.2003 № 6-rp / 2003 allows to reach conclusion that statements in reasoning part contradict each other. In particular, paragraph 1 p. 4 veto decision of President understood so that in event president of Ukraine did not sign law, he returns it with substantiated and formulated proposals to Verkhovna Rada of Ukraine for reconsideration. That President of Ukraine has right to veto and return law for review Verkhovna Rada of Ukraine appropriate proposals [6]. In turn, in position of this Decision (paragraph 3 p. 4) it says that President is not obliged to substantiate reasons and grounds veto.

Thus, position of Constitutional Court of Ukraine as of legislator on whether veto of President on laws passed by Verkhovna Rada of Ukraine determined n. 30, ch. 1, Art. 106, same as right of return law with substantiated and formulated proposals (ch. 2, Art. 94), or that there are two alternatives (different) rights. The difference of these positions is fundamental, given that in first case, President may limit exercise two acts – not signing law and return it to Parliament, in second case to them should always be added a third act – formulation of concrete proposals and comments to relevant law. Because of justification for one of two positions, we turn to analysis of other legal acts which regulated procedure for imposing, review or overcoming President's veto.

Thus, the Decree of President of Ukraine «On Approval of Secretariat of President of Ukraine» one of functions of Presidential Secretariat determined implementation of established procedure of examination of laws adopted by Verkhovna Rada of Ukraine submitted to President of Ukraine and preparing proposals Head of State on signature laws or application to them veto [7]. Consequently, in this legal act is not specified whether Presidential



Secretariat has to formulate opinions on specific shortcomings of law, comments or suggestions for content or adoption procedure of law and so on.

Instead Art. 123 of Law of Ukraine «On the Verkhovna Rada of Ukraine» observed a clear identification of veto of President law with right defined in ch. 2, Art. 94 of Constitution of Ukraine.

In particular, article stated that if President of Ukraine veto on law adopted by Parliament and returned law to Parliament in Part 2 of Article 94 of Constitution specified period Ukraine with substantiated and formulated proposals, result is cancellation of vote for law in general and opening of its reconsideration procedure in Parliament [8]. Such identification is found in p. 47 Order of Head of Verkhovna Rada of Ukraine «On Approval of Procedure of Verkhovna Rada of Ukraine of draft laws, decrees and other acts of Verkhovna Rada of Ukraine» [9]. Thus, based on analysis of two recent legislative acts can be concluded that provisions of ch. 2, Art. 94 of Constitution of Ukraine roses understood as explanation of veto of President, enshrined in p. 30, ch. 1, Art. 106 of Constitution of Ukraine. That is, in ch. 2, art. 94 states that President implements veto by returning law to parliament with justification and formulated proposals to within fifteen days.

In our opinion, this conclusion seems wrong. The basis of this idea serves as justification fact that legislator in Art. 94 of Constitution of Ukraine does not use term «veto». That is, delineates right of veto and right of return of laws motivated and formulated proposals. However, this does not mean that President of Ukraine may be unreasonably and arbitrarily veto on laws passed by Verkhovna Rada of Ukraine, as this can be regarded as an abuse of right. Therefore, in practice, mainly President vetoes while wording suggestions or comments to law. However, this does not preclude his right to veto laws apply without substantiation motives and reasons for its imposition (as stated in Decision of Constitutional Court of Ukraine of 11.03.2003 № 6-rp / 2003 [6]).

So, one of significant shortcomings of current state of constitutional and legal regulations are ambiguous wording and interpretation of content of veto when position of one article of Constitution (p. 30, ch. 1, Art. 106) can rotate law in

order veto even without consideration, and another article (Art. 94) refers to need to justify such a return. As noted on this occasion Russian scientist A. Shchukin decision to return act without substantive consideration of constitutional practice of foreign countries is considered as unconstitutional action of head of state [10, c. 98]. In this connection it is necessary in Art. 94 of Constitution of Ukraine to use term «veto» to avoid ambiguity.

Another contentious issue that arose in practice right of veto by President, and that was basis appeal to Constitutional Court of Ukraine, 73 people's deputies of Ukraine, is legitimacy of President to veto laws amending Constitution of Ukraine, that constitutional laws. Thus, decision of Constitutional Court on March 11, 2003 number 6-rp / 2003 [6] was declared constitutional by President of Ukraine veto on Verkhovna Rada of Ukraine adopted Law of Ukraine «On Amendments to Article 98 of Constitution of Ukraine» of returning for reconsideration Parliament Rada of Ukraine. In fact, it meant that Constitutional Court of Ukraine recognized right of President to veto any laws passed by Verkhovna Rada of Ukraine, including those that make changes to Constitution of Ukraine (constitutional law).

The Law of Ukraine «On the recovery of certain provisions of Constitution of Ukraine «dated February 21, 2014 № 742 -VII [ 11] amended the n. 30, p. 1, p. 106 of Constitution of Ukraine, which clearly stipulates that president has right to veto laws passed by Verkhovna Rada of Ukraine, in addition to laws amending Constitution of Ukraine of laws. This means that decision of Constitutional Court of Ukraine on March 11, 2003 number 6-rp / 2003 [6] is in force, but to apply provisions of its opinion n. 30, ch. 1, Art. 106 of Constitution of Ukraine in version in force today, it is impossible. Thus, the problem of constitutionality and validity of powers of President to impose veto on constitutional laws be solved quite successfully.

However, today, there is still a problem in field of legal regulation of veto of President, who repeatedly popped up in practice (which indicate a number of researchers [12, p. 169; 13, p. 123]). This includes right of President to re-veto laws passed by Verkhovna Rada of Ukraine.

O.M. Mudra indicates need to clarify situation when president several

times returned law to Verkhovna Rada. According to Constitution of Ukraine, law which will be re-adopted by Parliament of Ukraine not less than two thirds of its constitutional composition, President of Ukraine is obliged to sign and officially promulgate it within 10 days. On this basis, scientist makes a reasoned conclusion that his return to parliament after overcoming a presidential veto, head of state has no right [13, p. 123].

In the decision of Constitutional Court of Ukraine on July 7, 1998 № 11-rp / 98 [4] provides some situations on which order is determined by repeated use of veto:

1) if the proposal of President of Ukraine to law in its proposed wording is taken into account fully reenactment two-thirds of Verkhovna Rada of Ukraine is not required;

2) in case Verkhovna Rada of Ukraine re-adopted of law after considering proposals of President of Ukraine President is obliged to sign and officially promulgate it within ten days (that the President can not veto reapply);

3) if during examination of proposals to President of Ukraine will be amended law not provided for these proposals, the President of Ukraine acting in accordance with ch. 2, Art. 94 of Constitution of Ukraine (ie President may again return law without signing it). [4]

Thus, the problem of re-use of President of Ukraine veto on laws that have been returned to him for reconsideration to Verkhovna Rada of Ukraine, partly resolved. However, in our opinion, this issue requires a clear regulation in provisions of Constitution of Ukraine.

O.T. Voloshchuk raises problem of abuse by President in some cases terms of his veto, although they are clearly stated in ch. 2, Art. 94 of Constitution of Ukraine, and order of their use is explained in Decision of Constitutional Court of Ukraine on July 7, 1998 № 11-rp/98[4]. The scientist gives a practical example of a situation repeated imposition of President of Ukraine veto on Law of Ukraine «On the Accounting Chamber», which was returned to Parliament within 18 days. President, ignoring constitutional provisions, vetoed after expiry of term established by Constitution and returned law back to Parliament. In this regard, O.T. Voloshchuk President proposes to provide accountability for his misconduct [12, p. 169].



In our opinion, this problem was partially solved by Law «On the recovery of certain provisions of Constitution of Ukraine» dated February 21, 2014 № 742-VII [11], which was supplemented ch. 4. 94 of Constitution of Ukraine provisions that if President of Ukraine hasn't signed law, he immediately promulgated by Chairman of Verkhovna Rada of Ukraine and published over his signature [3]. However, if President refuses to sign law after veto was overridden, or unless it was applied, in fact it violates his constitutional duty set by Art. 94 of Constitution of Ukraine. Therefore, we can agree with proposal for establishment of constitutional and legal responsibility of President. However, in our opinion, a reasonable yield will be laying on refusal of President of Ukraine categorical obligation to sign law even if it is with him fundamentally disagree. In this case, the law may be published, signed by Chairman of Verkhovna Rada of Ukraine.

**Conclusions.** Therefore, assessing current state of constitutional and legal regulation of Ukraine President's veto should be made to some of its drawbacks: 1) ambiguity of wording and interpretation of content of veto (at p. 30, ch. 1, Art. 106 and ch. 2, Art. 94 of Constitution); 2) absence of rules of Constitution of Ukraine, which would be regulated procedure repeated use of veto by President of Ukraine; 3) indetermination on issue of bringing President of Ukraine to constitutional and legal responsibility for violation of obligation of timely signing of law and so on.

All this, flaws and gaps need proper elimination by introducing respective amendments to Constitution and development of other legal acts. However, it should be noted that constitutional and legal regulation of veto of President of Ukraine is at next stage of development. Therefore, despite some of its shortcomings, there are some positive developments in process. In particular, they include solving question about whether President's right to veto constitutional laws, publication of law, signing by Chairman of Verkhovna Rada of Ukraine if President does not sign law, which veto was overridden. In addition, should positively evaluate new edition of Law «On the Verkhovna Rada of Ukraine», which contains a separate chapter on process of laws that were returned in order of President of his veto. Thus, legislator

was partly taken into account proposals put forward N.V. Ganzha, who pointed to lack of normative regulation institute veto President of Ukraine in Verkhovna Rada of Ukraine Regulations (as amended, which operated in 2004) [14, p. 133]. All these positive developments indicate that legal and constitutional process is not in place. Legal regulations of veto President of Ukraine is gradually improving. However, to date still remains a number of unsolved issues in this area which require thorough and timely solution to constitutional level.

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